THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No. 903 Of 2001
Old F.A.F.O. No. 417 of 1987

The State of U.P. through the Collector,
Tehri Garhwal

…Appellant.

Versus

1. Smt. Guddi Devi W/O Dhoom Singh,
   Village Bhaldiyana, Patti Chandrabadhni,
   District Tehri Garhwal.
2. Smt. Maya Devi W/O Bader Singh,,
   R/O village Bhaldiyana, Patti Chandrabadni,
   District Tehri Garhwal. (Claimants)
3. Uttar Pradesh State Road Transport Corporation
   Dehradun.
4. Mahavir Singh S/O Tej Singh, Driver, Truck No.
   U.T.C.-9889, P.W.D., Pauri Garhwal.

…. Respondents.

Sri Nand Prasad, learned Standing Counsel for the appellant.

Date April 22, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 110-D of the Motor Vehicles Act, 1939 ***(for short the Act)*** has been preferred against the judgment and award dated 17-11-1986 passed by the Motor Accident Claims Tribunal Tehri Garhwal ***(in short the Tribunal)*** in M.A.C. Petition No. 20 of 1984, Smt. Guddi Devi and another Vs. U.P.S.R.T.C. and others whereby the learned Tribunal awarded compensation of Rs. 35,878/- in favour of the petitioners recoverable from the Opposite Parties No. 1 and 2, U.P.S.R.T.C. and State of U.P. in equal shares. Aggrieved, the State of U.P. has come up in appeal.

Relevant facts giving rise to this appeal are that Dhoom Singh lost his life in a motor vehicle accident, which occurred on 8.9.1983 at 1 p.m. between Gooler and Shivpuri on Rishikesh Road within P.S. Muni-ki-Reti who was travelling in

bus No. UTF 3705 belonging to UPSRTC, which was being driven rashly and negligently at a high sped. At the place of accident, Truck No UTC-9889 belonging to the appellant was also coming and there was sufficient place for two vehicles to cross each. Due to the negligence of the driver of the bus, the bus fell on the bank of Ganga river. Both the drivers of two vehicles were negligent, hence the compensation of Rs. 1,73,000/- has been claimed by the widow and mother of the deceased.

The opposite parties contested the claim petition by filing their written statements. The O.P. Nos. 2 and 3 the owner and driver of the truck have admitted the death of the deceased and petitioner Guddi Devi was paid sum of Rs. 15,122/- by the State Government. They asserted that on the illfated day, the bus was coming from Deoprayag to Rishikesh while the truck in question was coming from Rishikesh to Deoprayag. At the spot the road was narrow. The truck was ascending while the bus was coming downwards. When the two vehicles came face to face, the truck driver applied brakes and stopped the truck. However, the rear body of the bus collided with the truck due to which the driver of bus lost control and due to the accident, several passengers of the bus died on the spot. There was no negligence on the part of the driver of the truck.

The U.P.S.R.T.C. filed separate written statement and asserted that the truck driver was negligent, therefore, the Corporation is not liable to pay compensation.

On the pleadings of the parties, the learned Tribunal framed necessary issues in the case. After recording evidence of the parties and perusing the evidence, the learned Tribunal came to the conclusion that the accident resulting in the death of Dhoom Singh was caused due to rash and negligent acts on the part of the driver of the two vehicles involved in the accident and accordingly,

the U.P.S.R.T.C. and State were fastened liability to pay compensation. After dealing with the evidence on the point of quantum of compensation, the learned Tribunal ultimately awarded compensation of Rs. 35,878/- to the claimants after adjusting the amount of Rs. 15,122/- paid by the State to the claimant.

The impugned judgment and award has been assailed mainly on the ground that the truck in question belonged to Public Works Department Pauri Garhwal, but the same was not arrayed as party to the proceedings. The findings of the tribunal on the point of negligence has also been challenged and it was contended that the finding of the Tribunal is not based on evidence.

I have heard learned counsel for the appellant and have perused the entire material on record.

So far the contention that the truck belonged to the Public Works Department, which was not made a party is concerned, I have gone through the written statement filed by the appellant. There is no such averment that the claim petition is defective for non-impleadment of P.W.D. This is why no issue was framed by the Tribunal. It is not open to the appellant to raise this plea in appeal. This contention is not tenable.

So far as the finding on the point of negligence is concerned, the learned Tribunal has framed Issue No.1 on the point. Before the Tribunal, the claimants have examined. Witness Km. Kailashi Devi was examined as P.W.1 in another claim petition no. 1 of 1984 arising out of the same motor accident and as per statement of the learned counsel for the parties her statement was to be read in the instant case. This witness had given ocular account of the accident as she was travelling in the ill-fated bus. She had stated that she witnessed as to how the two vehicles collided. This witness was cross-examined. But no suggestion was put to this

witness that the speed of the truck was 13-14 kms. per hour. She has clearly stated that the truck driver had not blown the horn at the spot.

The appellant-State has examined two witnesses namely D.W.1 Manmohan Mittal and D.W. 2 Driver Mahavir Singh. These witnesses have tried to absolve the driver Mahavir Singh from negligence on his part. The learned Tribunal has dealt with the testimony of these witnesses at page nos. 8, 9, 10 and 11 of the impugned judgment. The learned Tribunal has clearly observed as under:-

"While there is no doubt that the bus driver was driving it fast and negligently, the evidence and matter on record also satisfactorily show that the driver of the truck was also negligent and he was driving it very fast. Though OP No. 2 has led evidence to show that the driver of the truck had blown horn, Kailashi PW 2 has denied it. It appears that if the horn had been really blown by the driver of the truck, the accident would have been averted."

Having considered the entire evidence on the point of negligence available on record, I find that the ocular testimony of Kailashi PW 2 is more reliable, while the witnesses of the appellant D.W. 1 and D.W. 2 are interested to save the skin of the driver Mahavir Singh. Moreover, the statements of D.W.1 and D.W.2 are not consistent with the stand taken by the O.P.Nos. 2 and 3 in their written statement. The learned Tribunal was fully justified in holding that the drivers of the two vehicles involved in the accident were equally responsible, else the accident would have been avoided. The learned counsel for the appellant could not point out any serious infirmity in the finding of the learned Tribunal on the point of negligence.

For the reasons and discussion aforesaid, I find no force in the appeal preferred by the State, which is liable to be dismissed.

No other point was urged or argued before me in this appeal.

The appeal is hereby dismissed. The impugned judgment and award dated 17-11-1986 is upheld. No order as to costs.

(B.S.Verma, J.)

R.C.P.